

Review Of 2001 Independent Evaluation Conducted By Jeffrey Kuhn

A. Overview of Independent Evaluation

The Division of State Court Administration was awarded a federal Juvenile Accountability Incentive Block Grant (JAIBG) to conduct an independent evaluation of the Indiana Family Court Project in 2001. Jeffrey A. Kuhn, Esq., a Senior Fellow with the Center for Families, Children and the Courts of the University of Baltimore School of Law was contracted to serve as the independent evaluator. Mr. Kuhn's extensive experience in family courts includes his prior positions as administrator of the New Jersey Family Court System, chair of the ABA Advisory Board to the Community, Families and Justice Project, and staff attorney with the National Council of Juvenile and Family Court Judges specializing in family courts. He has authored many articles on family courts, and conducted court performance assessments in Idaho, Kentucky, Florida, District of Columbia, Maryland, Georgia, North Carolina, California, Texas and Michigan.²⁵

Mr. Kuhn's approach to the evaluation was broad based, including (1) a statewide assessment of family justice issues through a written survey of three hundred Indiana attorneys and judicial officers and three statewide focus groups and (2) a review of the processes and needs of the three original pilot counties through two separate (day-long) site visits to each county. The statewide survey and focus groups were implemented because the pilot counties represented only a small sector of the total state. The statewide approach ensured

greater diversity of input regarding rural vs. urban needs, as well as racial, religious, and cultural differences throughout the state. Additionally, Mr. Kuhn provided technical assistance to the project counties and educational workshops on the national perspective on family courts and related justice issues.

Mr. Kuhn submitted a preliminary report in the spring of 2001 and a final report in August of 2001. Access to the final report, entitled *Independent Evaluation: Indiana Family Court Initiative*, is available through the family court Web site at www.IN.gov/judiciary. The *Independent Evaluation* is referenced by specific page or chart number throughout this chapter. The references are indicated with a ©.

B. Statewide Written Survey of 300 Judges and Attorneys

Mr. Kuhn created the Indiana Family Justice Needs Assessment Survey that was distributed to one hundred judicial officers and two hundred attorneys from around the state in early 2001. *See report, Appendix A.* © The judicial survey participants were selected randomly from the list of judicial offices with juvenile or domestic relations jurisdiction provided by the Indiana Judicial Center. The attorney survey participants were selected randomly from the list of attorneys practicing in juvenile or family law provided by the Family Law Section of the Indiana Bar Association. The survey form advised participants that its purpose was "to help identify present and significant practices related

²⁵ Jeffrey Kuhn, "A Seven-Year Lesson on Unified Family Courts: What We Have Learned Since the 1990 National Family Court Symposium," *Family Law Quarterly* (1998); Sanford N. Katz and Jeffrey A. Kuhn, "Recommendations for a Model Family Court: A Report from the National Family Court Symposium," (National Council of Juvenile and Family Court Judges 1991).

to state court handling of matters related to children and families." The return rate on the survey forms for the judicial officers was 56% and 31% for the attorneys. No persons from the family court pilot projects were included as survey participants.

In addition to obtaining demographic information on each survey participant (such as number of years in practice and areas of practice), the survey addressed four case management issues:

- (1) coordination of multiple case families
- (2) alternative dispute resolution (ADR)
- (3) needs and services for families and children
- (4) educational programming for judiciary and bar on children and families.

The following is a summary of Mr. Kuhn's data and the survey findings most significant to the Indiana Family Court Project.

1. Incidence and Identification of Multiple Case Families

The survey respondents were asked "what percent of your client or litigant caseload has more than one child or family law matter presently pending before the court?" Mr. Kuhn notes that the highest response rate was "no knowledge" as to the percentage of litigants/clients who have multiple case involvement. However, a substantial number of the respondents estimated that multiple cases involving the same person or family occur between 10% to over 75% of the time. *See chart I-3 and report narrative, p. 8.*[©] Based on these responses and national research data, Mr. Kuhn opined, "Therefore, the frequency with which families in Indiana appear in court for more than one matter is significant enough to be concerned about examining the means by which the courts can most effectively work with these families." *See report narrative, p. 8.*[©]

The survey results also indicated that (1) attorneys and judicial officers did not consistently ask clients/litigants if they had other pending litigation, *see chart I-4, p.9*[©], and that (2) the main source for discovering multiple case information is from the client/litigant, rather than

from court files, judge provided information, or other research, *see chart I-5, p.9*[©]. Mr. Kuhn concluded:

The responses to questions concerning the coordination of child and family cases in the Indiana courts indicates there is no formal, uniform tracking mechanism or procedure in place that facilitates the linkages of cases between family or same household members. When such linkages occur, they do so based on coincidental circumstances that disclose themselves through family members, themselves. Because the client or the litigant is the most frequent source of this information, there appears to be a need for the courts to develop a more formal mechanism in order to secure that information on a regular basis. See report narrative, p. 18.[©]

These survey results suggest a need for automated court technology to identify multiple case families. They also indicate a need to encourage attorneys to ask their clients about other pending court cases on a consistent basis. Indiana Trial Rule 3.1(A)(6) requires the petitioning party to list the caption and case number of the party's related cases in the Appearance Form. The survey results may equally suggest a need for judicial officers to ask litigants whether they have other pending litigation. Jurisdictional conflicts, redundant litigation, or uninformed decision making may occur when multiple case litigation is not brought to the attention of the court.

2. Proactive Interest in Case Coordination, but Barriers may include Court's Lack of Coordination Strategies and Confidentiality Issues

Survey respondents were asked to identify what action they would take if they became aware that a client/litigant had multiple case involvement. Thirty-two percent responded they would take "steps to consolidate," 26% responded they would ask for client input, 24% responded they would do "nothing," 8 % said they would inform the court, and 2% responded they would "transfer proceedings." *See chart I-6, p.10.*[©] When asked in the follow-up question why the respondent might not take any action with regard to the multiple case

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situation, the most frequent response was "courts not ready." *See chart I-7, p.10.* © Mr. Kuhn interpreted this response to reflect a belief by survey respondents that the "courts are not prepared to handle coordinated or consolidated proceedings." Mr. Kuhn noted that the next most frequent response regarding why no action was taken when the client/litigant had multiple case involvement was "confidentiality." *See report narrative, p.10.* © This may indicate that current Indiana law on confidentiality in juvenile cases, or the perception of the law, serves as a barrier to case coordination in multiple cases involving the same children.

3. Use of Automation and other Intake Services for more Effective Case Management

The survey asked a series of questions to determine what "intake" services are performed by court personnel upon receipt of new or re-opened case filings. The survey defined "intake" to include the following: automated case record; record searches for other related cases; case summary sheet; assessment for service referral; service referral; assignment to case manager; and litigant interviews. Over half of the responses to the question indicated that the court had no intake services or that the respondent did not know if the court had intake services. *See chart I-9, p.11.* © Of those who responded that the court had intake services, 86% indicated that the court had automated case records, which Mr. Kuhn opined "bodes well for expanding functional use of automation to more effectively manage family law matters." *See chart I-10, p.12 and narrative survey conclusions, p.19.* © Responses also indicated knowledge that some court systems were providing the types of intake services that Mr. Kuhn suggested would be particularly helpful in juvenile and family law cases, such as court record searches, case summary sheets, intake interviews with litigants, service referrals, and assessments. *See chart I-10 and report narrative, p.12.* © However, Mr. Kuhn noted

that survey responses indicated that family history inquiries and assessments for service referral were not often conducted by court systems.

4. Alternative Dispute Resolution (ADR) Service Available, But May not be Affordable

The responses regarding ADR indicated that ADR services were generally available in family law litigation, and that some courts mandated ADR in family law matters. However, the data also showed that fees were assessed for most ADR services and that fee waivers were not frequently available. *See chart I-11, p.13.* © Responses to a follow-up question indicated the limited availability of pro bono mediation services and court payment of mediation. *See chart I-12, p.13.* © Mr. Kuhn opined that the responses to these questions, and an additional question about what types of ADR are available, indicate that ADR services in family law are primarily limited to mediation services and are only available to those litigants who can afford to pay for them. *See narrative p.14.* ©

5. Unmet Service Needs, Volunteerism, and Community Service Coalitions

Respondents listed the following when asked to identify five of the highest priority service needs for children and families in the courts in which they work or practice: counseling; supervised visitation; parent education; Guardian Ad Litem (GAL); and mediation. *See chart I-14, p.15.* © Follow-up questions focused on the existence of volunteer services and community coalitions that facilitate court-community partnerships and awareness of service resources. The responses indicated that GAL/CASA (child advocates) is the best known volunteer program. *See charts I-15 and I-16, p. 16.* © Some respondents indicated that community coalitions exist, but the majority of the respondents perceived that such coalitions did not exist in their communities or the respondents had no knowledge of whether the coalitions did or did not exist. *See chart I-17, p.17.* ©

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C. Three Statewide Focus Groups

1. Overview

At the recommendation of Mr. Kuhn, three interdisciplinary focus groups were convened on March 21 and 22, 2001 in downtown Indianapolis to identify issues in family and juvenile law practice in Indiana. As with the statewide surveys, the focus groups were intended to collect information from a cross section of the entire state. The pilot family court counties were specifically excluded from the focus group sample.

Focus group 1 included representatives from the largest Indiana counties (based on population and number of judicial officers). Focus group 2 included representatives from medium sized counties, and focus group 3 included representatives from smaller counties. Each focus group was structured to last three hours and to include between twenty to thirty persons from the following disciplines and professions: judicial officers; law enforcement officers; attorneys from private practice, public agencies, and IV-D child support enforcement prosecutors; representatives from the Office of Family and Children and Probation; and representatives from mental health, CASA (child advocates), and domestic violence programming. Potential participants for each focus group were identified by the members of the Judicial Domestic Relations Committee and the Juvenile Court Improvement Committee. The identified persons were invited to attend the focus groups by a personal letter from Chief Justice Randall T. Shepard and a follow-up phone call from the family court project consultant. Approximately ninety persons attended the focus groups in total, and the multiple disciplines were well represented in each focus group.

Each focus group began with Mr. Kuhn's presentation on national trends and justice issues in family law litigation, and a brief outline of

Indiana's Family Court Project by the project consultant, Frances G. Hill. Participants were then asked to think about "what works, what requires improvement and the greatest needs of the legal system" for serving children and families in Indiana. Mr. Kuhn facilitated participant response by moving the discussion through the following topics:

- court management of cases
- due process and the rule of law
- alternative dispute resolution
- and safety and prevention issues

Individual participation in each of the focus groups was high, with participation occurring across all disciplines. Specific responses on needs and concerns for the justice system were recorded on flip charts. With fifteen minutes remaining in each focus group period, participants were given three colored stickers and asked to affix them on the flip chart pages to their highest priorities for the family justice system in Indiana.

2. Priority Issues and Needs in Indiana's Family Justice System

Mr. Kuhn synthesized the information obtained from the focus groups into the following priority issues or needs for Indiana's family justice system:

- Improved case management and tracking
- Domestic violence and protection order issues
- Legal and process issues involving confidentiality and information sharing
- Expansion of affordable Alternative Dispute Resolution (ADR) options
- Unmet service needs in the following areas: GAL/CASA (child advocates); alternative juvenile delinquency and prevention programs; supervised child visitation; and improved means to facilitate service delivery in these areas, including developing enabling services and service collaborations
- Training for judges, attorneys, court staff, law enforcement, and other service providers in child development, domestic violence, ADR, and assisting pro se litigants

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- Building relationship and networking between schools and courts

See report at pp. 20-21. [©]

Four of these highest priority areas are discussed below with examples of specific and repeated comments. The domestic violence issues are not listed here as many of those concerns were addressed in the Indiana 2002 protective order legislation.

Improved Case Management and Tracking

The most frequently identified priority of the participants was improvement of the manner in which juvenile and family law cases are managed and tracked. Expediting case procedures was also a frequently listed priority. The following representative responses were given by focus group members:

- Need for guidance on how to consolidate cases
- Earlier case assessment and/or increased use of court conferencing to set time frames and issues
- Expediting cases by avoiding judicial delays, more uniformity of court procedures, and use of American Bar Association process time lines
- Need for on-line Internet inquiry to link cases
- Expediting CHINS and criminal cases involving same incident of child abuse or neglect
- Monitoring compliance with court orders
- Case managers to track families/assess needs

Confidentiality and Information Sharing and other Legal Issues

Issues relating to confidentiality and information sharing were the third most frequently identified priority. The focus group participants expressed significant differences of opinion with regard to confidentiality vs. information sharing. They differed in their perspectives on legal requirements, due process, privacy implications, and philosophy. Responses in this area included:

- Lack of clarity on legality of information sharing and confidentiality
- Need for access to information for good decision making
- Need for communication to other agencies
- Need/appropriateness of maintaining confidentiality

The following additional legal issues were raised in the focus groups: change of judge issues in termination of parental rights and custody/visitation modification cases; ex parte communications; and clarity of rules for case consolidation.

Alternative Dispute Resolution (ADR)

The need for ADR services was a frequently noted priority of the focus group participants. The following responses were given:

- Mediation should be used in child abuse/neglect cases involving Office of Family and Children
- Mediation needs to be affordable and obtainable for pro se litigants
- Need for access to mediation earlier in litigation process
- Need for low cost mediation in domestic relations cases
- Use of non-binding arbitration to help ripen the case

Resources for Service Provision

Focus group participants identified unmet service needs in the family justice system. The following responses are representatives:

- Need for enabling services
- Need for indigent counsel and child advocates (CASA/GAL) in juvenile and custody cases
- Need for supervised visitation services
- Need for prevention services
- Need for more juvenile alternative programs

3. Impact of Focus Group Results on Family Court Project

Mr. Kuhn recommended that the focus group data might inform and impact Indiana's family court project in several areas. *See conclusions on focus groups, pp. 22 and 23.* [©] Mr. Kuhn's most relevant recommendations are summarized below:

Case Coordination through Pilot Family Courts

Expansion of the pilot family court project may be a means to improve the manner in which courts manage their family law caseloads. Implementation of policies, practices and procedures to coordinate multiple cases involving the same family, and more efficient management of those cases, is a fundamental standard for family courts.

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Need to Address Confidentiality Issues

Given the considerable concern surrounding confidentiality and information sharing issues in juvenile and family law, a statewide group of multi-disciplinary professionals might conduct an inquiry into the law and practice relative to these issues and offer recommendations for changes and/or improvements.

Developing Affordable ADR Services

Continuing discussion between the judiciary and bar should address the increasing need for ADR services, and the extension of these services to pro se litigants who often cannot afford traditional mediation fees. The innovative ADR programming piloted in Putnam County, which increases access to services, conserves judicial resources and increases docket control, should be considered for replication in other jurisdictions.

Court-Community Collaborations for Service Delivery and Continuing Education

Courts should explore "formalized collaborative efforts" with community agencies in which resources can be pooled instead of duplicated. Mr. Kuhn noted that collaboration occurs with the ACT program in Johnson County and the Wrap Around program in Monroe County. Courts should strive to build relationships with their school systems. Courts may consider volunteer resources for unmet service needs (such as supervised child visitation), and the appropriateness of pursuing increased CASA services in custody matters. Ongoing training and education in family and children issues, including child development, should be available to the judiciary and legal bar.

D. Site Visits to Original Pilot Counties

January through May of 2001, Mr. Kuhn conducted two, day-long site visits to the three original pilot counties: Monroe, Johnson and Porter Counties. With regard to the pilot counties, Mr. Kuhn's final report contains (1) an overview of the major processes and programs of the pilot projects and the data they collected; (2) a list of "best

practices" developed by the projects; and (3) a list of the "project challenges."

Mr. Kuhn was very positive about the efforts of the pilot counties in the development of mission statements and objectives, creation of procedures and forms, manuals, and development of best practices for coordinating and expediting the litigation of multiple case families and specialized ADR programming.

Mr. Kuhn graphed the data collected from the pilot counties in the following categories: numbers of court cases per family; most commonly occurring case types in multiple case families; case referral sources; family social factors; time to disposition; use of Family Court Rules; pro se representation; and use of ADR. *See charts II-1 through 11, p. 31-40.* [©] Also, Mr. Kuhn's report contains a discussion of the processes and programs developed in each pilot court. Mr. Kuhn's data and his narrative information on each county is not summarized here because more updated and detailed versions of this information are presented in Chapters 2 and 3 of this report. However, Mr. Kuhn's assessment of the "best practices" and challenges of the pilot counties are summarized immediately below, and his recommendations and conclusions are stated at the end of this chapter.

1. "Best Practices" Created by the Pilot Projects

As a preface to this section, it is significant to note that each pilot project developed different case coordination models and service programming based upon the individual needs and resources of their communities. Therefore, no one project demonstrated all of the innovations or best practices identified by Mr. Kuhn. *See report, pp. 44-47.* [©] The most significant best practices identified by Mr. Kuhn are:

Developing a family court handbook that explains in brief, simple language the operation of the family court, identifies its key personnel, and includes a simple user satisfaction form.

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Using a Party Appearance Form, Family Information Form, Family Indicators or Profile Forms, or some other process to do one or more of the following functions: identify the complexity of the litigation or specify issues, list the family's multiple cases, or identify the family's significant history and service needs (particularly involving domestic violence or substance abuse issues).

Conducting regular meetings of a local Family Court Advisory Board with detailed minutes prepared and widely distributed, to facilitate a broader understanding of the family court project within the community and to obtain community input on the pilot project.

Providing more timely and effective services to high conflict families in complex dissolution matters.

Scheduling significant events in separate cases involving the same family concurrently before the same judge.

Implementing an active case monitoring and status review component as part of the case tracking and information sharing model.

Developing and implementing local rules of practice for the family court project.

Using local law schools to help address mediation and ADR resource needs.

In addition to his formal listing of best practices, Mr. Kuhn noted two other practices meriting special consideration: **(1)** the use of combined status conferences in Johnson County on the family's multiple cases, set within the thirty days or less of assignment of the cases to family court, *see report, p. 26*[©]; and **(2)** the "facilitation" project in Putnam County involving the use of a family law trained mediator to conference with parties, key service providers, and other extended family members to reach acceptable solutions in difficult cases, *see report, p. 42*.[©]

2. Project Challenges

Mr. Kuhn identified several challenges faced by the three pilot projects as summarized next, *see*

report, pp. 42-44[©]:

Maintenance of appropriate staffing levels to ensure quality case management

Absence of automated information system with basic family court management functionality

Limited Alternative Dispute Resolution resources

E. Independent Evaluation Recommendations

Mr. Kuhn's final report contains detailed recommendation and a very insightful conclusion. *See report at pp. 48-63*[©]. In summary, the recommendations encourage the continuation of the state Family Court Task Force, with added responsibility to do the following:

Explore court rules, policies, practices and procedures regarding family court matters.

Examine long term funding strategies to permit development and implementation of family courts and/or related court services and affordable Alternative Dispute Resolution. Provide guidance to local courts to resolve the challenges to effective coordination of multiple cases involving the same children and families.

Coordinate with the Judiciary Technology and Automation Committee (JTAC) to identify and meet the technological needs of Indiana's family justice system.

Work with local courts and bar associations to increase pro bono legal representation and assistance to pro se litigants in family law matters.

Use judicial leadership to establish collaborative working relationships to improve court and agency responses to domestic violence matters.

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F. Conclusion of Independent Evaluation

The wisdom of Mr. Kuhn's final conclusion is equally as important as his formal recommendations. Mr. Kuhn encourages Indiana to continue the pilot programs that have been successful and to make a "place by place" determination as to what reforms may be needed in the remaining counties. He notes that change in Indiana should be gradual and that reform is not for the "short-winded."

Readers are encouraged to read Mr. Kuhn's conclusion for themselves, as quoted below from the last page of his report: *See report p. 64.*[©]

As clearly as change and reform is desirable in the family justice system, change in Indiana should be gradual. Arthur Vanderbilt, a former Chief Justice of the state Supreme Court in New Jersey (A state court known for progressive reforms.) once said, "Court reform is not for the short-winded." This evaluation and needs assessment exercise indicates that certain elements of family court are desirable within Indiana's courts. However, a family court within every court jurisdiction may not be Indiana's best response. More appropriate is a place by place determination in which family justice reforms are implemented based on individual needs within demographically and resource diverse jurisdictions.

To the extent possible, expansion of fiscal incentives that encourage development and implementation of family court projects is recommended. Financial support might come from new or existing grant programs. Some consideration should be given to funding of continuing support for family court projects via a supplemental appropriations request or from the Judiciary's general operations budget based on a re-prioritization of anticipated activities and expenses for the ensuing fiscal year.

Project sites should be subject to a thoughtfully conceived performance review process that takes into account the needs of Indiana's children and families as well as basic performance principles of family courts. This performance review should be conducted by an organization, group of persons, or person familiar with family court planning, operations and performance assessment.

Whether the family court concept is continued or expanded will depend on a variety of factors that include not only this needs assessment and performance report but also, resource factors and to some degree, the appetite for court reform. Whatever that outcome, individual improvements of component parts of the family court pilot projects that have experienced positive outcomes should not be abandoned. At the very least, this project has helped identify best or model practices that benefit Indiana's children and families. These should be continued and expanded upon for that reason alone.

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